

### **REMARKS/ARGUMENTS**

Claims 1-43 are pending in the application. Claims 16-43 have been withdrawn from consideration, pursuant to the Examiner's restriction requirement. Claims 1-15 have been provisionally elected for prosecution, with traverse. Claim 1 has been amended; this amendment is fully supported by the original disclosure and no new matter has been introduced. Claim 8 has been canceled.

Reconsideration and allowance of claims 1-7 and 9-15 in view of the following remarks is respectfully requested.

#### **Restriction and Election**

The Examiner has restricted the claims to three groups. Group I includes claims 1-15, drawn to an odor control product. Group II includes claims 16-42, and is drawn to a method for treating digestible and odiferous organic waste. Group III, or claim 43, is drawn to an odor control system in a portable restroom facility.

In response, Applicant provisionally elects Group I with traverse. To whatever extent necessary, Applicant reserves the right to request a rejoinder of Group II upon the allowance of Group I.

#### **Rejection of Claims 1-15 under 35 USC § 112**

The Examiner has rejected Claims 1-15 on the grounds that the term "alcohol" is indefinite. Claim 1 as amended is drawn to a subset of common alcohols in which adipic acid is soluble, as will be appreciated by persons skilled in the art. See Specification at page 4, lines 1-2. In light of the present amendments, Applicant submits that the ground for this rejection has been removed and the rejection thus rendered moot. Withdrawal of this rejection is therefore respectfully requested.

**Rejection of Claims 1, 3, 5, 6, 8 and 12 under 35 USC § 103(a)**

Claims 1, 3, 5, 6, 8 and 12 have been rejected over US Patent No 4,405,354 to Thomas II et al. ('354), in view of US Patent No 5,767,054 to Sprügel et al. ('054). Because Sprügel et al. teach a surface disinfectant without a corresponding or even reasonably incidental odor control function, it is improper to combine '054 and '354 for purposes of 35 USC § 103.

The Applicant therefore asserts that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness because '054 is not analogous art and should not be considered in an obviousness analysis. The reference relied upon by the Examiner must either be in field of the inventor's endeavor or reasonably pertinent to the specific problem with which the inventor was involved. In re Deminski, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986).

The '054 patent is not concerned with odor management and control. When regarding the field of endeavor, the present invention deals particularly with a composition and method of use for reducing emission of odiferous gasses from organic waste material. (Page 2, lines 25-26). In contrast, '054 is directed toward a surface disinfectant and cleaning composition (Col. 2, lines 2-3). The mere coincidence that the '054 cleaner could be used in a portable toilet ('054 at Col 4, line 58; Office Action at pages 8-9) is not sufficient. Consequently, this reference relied upon by the Examiner is not in the field of the inventor's endeavor and should not be relied upon.

Moreover, the '054 patent is not reasonably pertinent to the Applicant's problem, e.g., odor control. The Federal

Circuit has clarified how to determine whether a reference is reasonably pertinent to the particular problem in which the endeavor was involved as follows:

[a] reference is reasonably pertinent if ... it is one which, because of the matter with which it deals, logically would have commended itself to the inventor's attention in considering his problem. ... If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem. ... [I]f it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.

In re Clay, 966 F.2d 656, 23 USPQ 2d 1058, 1060-61 (Fed. Cir. 1992). (Emphasis added); See also, MPEP § 2141.01(a).

According to the Applicant's specification, the purpose of the present invention is to "introduce[e] a slightly acidic solution in a suitable form into an organic waste holding area" to combat odors. (Page 3, lines 18-20). The purpose of '054 is to provide a "surface disinfectant and cleaning composition...[for] surfaces, apparatuses, instruments and furniture in medical areas, as well as household, kitchen, sanitary and veterinary areas...[and] is useful for the *personal disinfection* of toilets, wash basins, seats or the like..." (Col. 4, lines 49-59) (emphasis added).

The Applicant's invention has a different purpose as compared to that of the '054 patent. Consequently, one skilled in the art would have less motivation or occasion to combine the references cited by the Examiner. Because one of the references relied upon by the Examiner is not in the field of the inventor's endeavor and is not reasonably pertinent to the specific problem with which the inventor is

involved, the '054 patent is not analogous and should not be considered in an obviousness analysis.

**Rejection of Claims 2, 4 and 7 under 35 USC § 103(a)**

Claims 2, 4 and 7 have been rejected over '354 and '054 and further in view of US Patent No 5,736,032 to Cox et al. ('032).

For the reasons set forth above with respect to US Patent No 5,767,054 to Sprügel et al., Applicant submits that the combination of the cited references in the instant rejection is improper, and that the remaining references do not render the invention obvious under 35 USC § 103.

**Rejection of Claims 9-11 and 13-15 under 35 USC § 103(a)**

Claims 9-11 and 13-15 have been rejected over '354, '054, '032 and further in view of US Patent No 5,574,093 to States et al. ('093).

For the reasons set forth above with respect to US Patent No 5,767,054 to Sprügel et al., Applicant submits that the combination of the cited references in the instant rejection is improper, and that the remaining references do not render the invention obvious under 35 USC § 103.

**CONCLUSION**

In view of the above amendments and remarks, Applicant believes that claims 1-7 and 9-15 are in condition for allowance, and Applicant respectfully requests allowance of such claims. If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515-558-0200.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a

request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TJZ', with a long horizontal stroke extending to the left.

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